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REFERENCE TITLE: **cable television; services.**

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HB 2563

Introduced by
Representatives Gray C, Smith, Senator Martin: Representative Burges

AN ACT

AMENDING SECTIONS 9-505 AND 9-506, ARIZONA REVISED STATUTES; RELATING TO CABLE TELEVISION SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-505, Arizona Revised Statutes, is amended to
3 read:

4 9-505. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Area of jurisdiction" means that part of a city or town, or that
7 part of the unincorporated area of a county, or both when applied to a cable
8 television system within parts of more than one jurisdiction, for which a
9 license is issued.

10 2. "CABLE OPERATOR" MEANS A PERSON THAT IS ISSUED A LICENSE BY THE
11 LICENSING AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION
12 SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS.

13 3. "CABLE SERVICE" MEANS THE TRANSMISSION TO SUBSCRIBERS OF VIDEO
14 PROGRAMMING, OR OTHER PROGRAMMING SERVICE AND SUBSCRIBER INTERACTION, IF ANY,
15 THAT IS REQUIRED FOR THE SELECTION OR USE OF VIDEO PROGRAMMING OR OTHER
16 PROGRAMMING SERVICE.

17 ~~2-~~ 4. "Cable television system" means any facility ~~that, in whole or~~
18 ~~in part, receives directly, or indirectly over the air, and amplifies or~~
19 ~~otherwise modifies the signals transmitting programs broadcast by one or more~~
20 ~~television or radio stations and distributes such signals together with such~~
21 ~~other signals as authorized by the federal communications commission and the~~
22 ~~licensing authority, by wire or cable to subscribing members of the public~~
23 ~~who pay for such service, but the term shall not include~~ CONSISTING OF A SET
24 OF CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION AND
25 CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE THAT INCLUDES
26 VIDEO PROGRAMMING AND THAT IS PROVIDED TO MULTIPLE SUBSCRIBERS WITHIN A
27 COMMUNITY. CABLE TELEVISION SYSTEM DOES NOT INCLUDE:

28 (a) ~~Any such~~ A facility that serves fewer than fifty subscribers.

29 (b) ~~Any such~~ A facility that serves ~~only the residents of one or more~~
30 ~~apartment dwellings under common ownership, and commercial establishments~~
31 ~~located on the premises of such apartment dwellings~~ SUBSCRIBERS WITHOUT USING
32 ANY PUBLIC STREET, ROAD OR ALLEY.

33 (c) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE TELEVISION SIGNALS
34 OF ONE OR MORE TELEVISION BROADCAST STATIONS.

35 (d) A FACILITY OF A COMMON CARRIER THAT IS SUBJECT, IN WHOLE OR IN
36 PART, TO 47 UNITED STATES CODE SECTIONS 201 THROUGH 276, EXCEPT THAT THE
37 FACILITY IS A CABLE TELEVISION SYSTEM, OTHER THAN FOR PURPOSES OF 47 UNITED
38 STATES CODE SECTION 541(C), TO THE EXTENT THE FACILITY IS USED IN THE
39 TRANSMISSION OF VIDEO PROGRAMMING DIRECTLY TO SUBSCRIBERS, UNLESS THE EXTENT
40 OF THE USE IS SOLELY TO PROVIDE INTERACTIVE ON-DEMAND SERVICES.

41 (e) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 UNITED STATES CODE
42 SECTION 573.

43 (f) A FACILITY OF AN ELECTRIC UTILITY THAT IS USED SOLELY FOR
44 OPERATING ITS ELECTRIC UTILITY SYSTEM.

45 ~~3-~~ 5. "Existing cable television systems" means a cable television
46 system in operation on April 1, 1974, a cable television system under

1 construction on April 1, 1974, or a cable television system which had
2 received authorization for construction as of April 1, 1974.

3 6. "GROSS REVENUES" MEANS ALL CASH, CREDITS, PROPERTY OR OTHER
4 CONSIDERATION RECEIVED DIRECTLY BY A CABLE OPERATOR FROM SUBSCRIBERS WITHIN
5 THE AREA OF JURISDICTION FROM THE PROVISION OF CABLE SERVICES. GROSS
6 REVENUES INCLUDE FEES CHARGED TO CUSTOMERS FOR CABLE SERVICE AND INSTALLATION
7 OF CABLE SERVICE, RENTAL OR SALE CHARGES FOR EQUIPMENT USED TO RECEIVE CABLE
8 SERVICE, CHANGE IN SERVICE FEES, LATE FEES AND DISCONNECTION OR RECONNECTION
9 FEES. GROSS REVENUES DO NOT INCLUDE ANY ADMINISTRATIVE FEES, BAD DEBT,
10 AMOUNTS COLLECTED FROM SUBSCRIBERS FOR ANY LICENSE FEES, TAXES OR OTHER FEES
11 OR CHARGES IMPOSED ON SUBSCRIBERS OR TRANSACTIONS WITH SUBSCRIBERS BY THE
12 LICENSING AUTHORITY, STATE OR OTHER GOVERNMENTAL UNIT AND COLLECTED AND PAID
13 BY THE CABLE OPERATOR ON BEHALF OF THE GOVERNMENTAL UNIT AND AFFILIATE
14 REVENUE FROM SALES OF PRODUCTS IF THE PRODUCTS ARE NOT A CABLE SERVICE OR ARE
15 NOT DIRECTLY RELATED TO THE USE OF A CABLE SERVICE.

16 ~~4.~~ 7. "Intergovernmental contract" means the joint exercise of powers
17 authorized by title 11, chapter 7, article 3.

18 ~~5.~~ 8. "License" means that ordinance or resolution which contains the
19 right, authority or grant, given by a licensing authority enabling ~~the~~
20 ~~license holder~~ A PERSON to construct, operate and maintain a cable television
21 system.

22 ~~6.~~ 9. "Licensing authority" means the board of supervisors of a
23 county or the governing body of an incorporated city, INCLUDING A CHARTER
24 CITY, or town.

25 10. "OTHER PROGRAMMING SERVICE" MEANS INFORMATION THAT A CABLE OPERATOR
26 MAKES AVAILABLE TO ALL SUBSCRIBERS GENERALLY.

27 11. "VIDEO PROGRAMMING" MEANS PROGRAMMING THAT IS PROVIDED BY, OR
28 GENERALLY COMPARABLE TO PROGRAMMING PROVIDED BY, A BROADCAST TELEVISION
29 STATION.

30 Sec. 2. Section 9-506, Arizona Revised Statutes, is amended to read:

31 9-506. Authority to issue license; limitations

32 A. For the purpose of authorizing and regulating the construction,
33 operation and maintenance of cable television systems, the licensing
34 authority of a city or town for an incorporated area, or the licensing
35 authority of the county for unincorporated areas, either individually or
36 jointly by intergovernmental contract, may issue a license to any person to
37 use public streets, roads and alleys, and shall impose conditions,
38 restrictions and limitations upon the use of such public streets, roads and
39 alleys, and upon the construction, operation and maintenance of cable
40 television systems.

41 B. Any such licensing authority may adopt resolutions or ordinances
42 implementing and controlling the license or joint license, SUBJECT TO THE
43 LIMITATIONS IN THIS SECTION. The license issued by a licensing authority may
44 contain ~~provisions,~~ OTHER TERMS AND CONDITIONS and may ~~establish~~ AUTHORIZE a
45 ~~permit~~ LICENSE fee, ~~not to exceed~~ ON GROSS REVENUES. IN ADDITION TO THE
46 LIMITATIONS OF THIS SECTION, THE LICENSE IS SUBJECT TO the limits established

1 by THE COMMUNICATIONS ACT OF 1934, AS AMENDED (47 UNITED STATES CODE SECTIONS
2 151 THROUGH 615b) AND the federal communications commission.

3 C. OTHER THAN THE LICENSE FEE ON GROSS REVENUES AUTHORIZED BY THIS
4 ARTICLE AND AS PROVIDED IN PARAGRAPH 1 OF THIS SUBSECTION, NO LICENSING
5 AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PAY OR COLLECT ANY MONETARY OR
6 IN-KIND LICENSE FEE, TAX, FEE OR CHARGE, HOWEVER DENOMINATED. LICENSE FEES,
7 TAXES, FEES AND CHARGES INCLUDE ALL TAXES, FEES OR CHARGES ON THE PRIVILEGE
8 OF ENGAGING IN THE BUSINESS OF PROVIDING CABLE SERVICES OR RELATED TO USE OF
9 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICES AND ALL RENTS,
10 APPLICATION, CONSTRUCTION, PERMIT, INSPECTION, INCONVENIENCE AND OTHER FEES
11 AND CHARGES RELATED TO A CABLE OPERATOR'S USE OF THE PUBLIC STREETS, ROADS
12 AND ALLEYS, EXCEPT THAT:

13 1. ANY TRANSACTION PRIVILEGE TAX OTHERWISE AUTHORIZED BY LAW TO BE
14 LEVIED ON THE BUSINESS OF PROVIDING CABLE SERVICES OR IN RELATION TO USE OF
15 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICES MAY BE LEVIED
16 ON A CABLE OPERATOR, IF THE TAX IS LEVIED ONLY ON GROSS REVENUES AND THE RATE
17 OF THE TAX IS SUBJECT TO PARAGRAPH 3 OF THIS SUBSECTION, THIS SUBSECTION DOES
18 NOT AUTHORIZE THE IMPOSITION OF A TRANSACTION PRIVILEGE TAX ON INTERSTATE
19 TELECOMMUNICATIONS SERVICES.

20 2. THE LICENSE FEE AND ANY TRANSACTION PRIVILEGE TAX CONSTITUTE A
21 FRANCHISE FEE WITHIN THE MEANING OF 47 UNITED STATES CODE SECTION 542(g)(1).

22 3. UNDER NO CIRCUMSTANCES MAY THE TOTAL OF THE RATES OF THE LICENSE
23 FEE AND OF ANY TRANSACTION PRIVILEGE TAX ON GROSS REVENUES LEVIED OR ASSESSED
24 BY A LICENSING AUTHORITY FOR THE PRIVILEGE OF PROVIDING CABLE SERVICES AND
25 RELATED USE OF THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICE
26 EXCEED THE LESSER OF:

27 (a) A RATE OF ONE PER CENT PLUS:

28 (i) FOR A CITY OR TOWN, THE TRANSACTION PRIVILEGE TAX RATE APPLICABLE
29 IN THE CITY OR TOWN TO THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT
30 RETAIL.

31 (ii) FOR A COUNTY, THE HIGHEST TRANSACTION PRIVILEGE TAX RATE
32 APPLICABLE IN A CITY OR TOWN IN THE COUNTY TO THE BUSINESS OF SELLING
33 TANGIBLE PERSONAL PROPERTY AT RETAIL.

34 (b) THE MAXIMUM PERCENTAGE RATE ALLOWED FOR FRANCHISE FEES ESTABLISHED
35 BY 47 UNITED STATES CODE SECTION 542.

36 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSING AUTHORITY
37 AND A CABLE OPERATOR MAY AGREE IN A LICENSE TO IN-KIND PAYMENTS FOR USE OF
38 THE PUBLIC STREETS, ROADS AND ALLEYS. THE LICENSE SHALL BE STRUCTURED SO
39 THAT THE VALUE OF IN-KIND PAYMENTS MADE FOR USE OF THE PUBLIC STREETS, ROADS
40 AND ALLEYS TO PROVIDE CABLE SERVICES UNDER THE LICENSE IS LESS THAN OR EQUAL
41 TO AND IS OFFSET AGAINST THE LICENSE FEE AND ANY TRANSACTION PRIVILEGE TAX
42 LEVIED OR ASSESSED PURSUANT TO SUBSECTION C OF THIS SECTION. A POLITICAL
43 SUBDIVISION SHALL NOT REQUIRE A CABLE OPERATOR TO PROVIDE IN-KIND SERVICES,
44 MAKE IN-KIND PAYMENTS OR PAY A FEE IN ADDITION TO THE LICENSE FEE AND ANY
45 TRANSACTION PRIVILEGE TAX LEVIED OR ASSESSED AS PROVIDED IN SUBSECTION C OF

1 THIS SECTION AS A CONDITION OF ISSUING A LICENSE TO PROVIDE CABLE SERVICES,
2 EXCEPT THAT:

3 1. THE AUTHORITY OF A LICENSING AUTHORITY TO AGREE IN A LICENSE WITH A
4 CABLE OPERATOR TO MAKE IN-KIND PAYMENTS IS LIMITED TO COMPLIMENTARY LINE
5 EXTENSIONS FOR CABLE SERVICE, COMPLIMENTARY CABLE SERVICE TO GOVERNMENTS AND
6 SCHOOLS, AND CHANNEL CAPACITY FOR A MAXIMUM OF TWO CHANNELS TO AIR
7 NONCOMMERCIAL PUBLIC, PUBLIC SAFETY, EDUCATIONAL OR GOVERNMENTAL PROGRAMMING
8 OVER WHICH THE CABLE OPERATOR DOES NOT EXERCISE EDITORIAL CONTROL.

9 2. FOR THE PURPOSES OF THIS SUBSECTION, THE VALUATION OF IN-KIND
10 PAYMENTS SHALL BE THE ACTUAL COST OF LABOR AND MATERIALS USED TO PROVIDE ANY
11 COMPLIMENTARY LINE EXTENSIONS, THE CABLE OPERATOR'S STANDARD COMMERCIAL
12 CHARGE FOR ANY COMPLIMENTARY SERVICE AND THE VALUE OF THE CAPACITY FOR EACH
13 NONCOMMERCIAL PUBLIC, PUBLIC SAFETY, EDUCATIONAL OR GOVERNMENTAL CHANNEL,
14 WHICH SHALL BE THE RATE ESTABLISHED FOR LEASED ACCESS CHANNEL CAPACITY IN THE
15 AREA OF JURISDICTION BY THE FEDERAL COMMUNICATIONS COMMISSION.

16 E. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSING AUTHORITY
17 MAY REQUIRE THAT A CABLE OPERATOR:

18 1. BEAR REASONABLE COSTS THAT ARE ASSOCIATED WITH DAMAGE CAUSED TO
19 PUBLIC HIGHWAYS BY CONSTRUCTION, MAINTENANCE AND OPERATION OF ITS FACILITIES
20 IN THE PUBLIC HIGHWAYS AND THAT ARE IMPOSED ON A COMPETITIVELY NEUTRAL AND
21 NONDISCRIMINATORY BASIS IN RELATION TO COSTS BORNE BY TELECOMMUNICATIONS
22 CORPORATIONS UNDER SECTION 9-582, SUBSECTION C.

23 2. PAY FINES, FEES, CHARGES OR DAMAGES FOR BREACH OF THE TERMS AND
24 CONDITIONS OF THE LICENSE.

25 F. NOTHING IN THIS SECTION AFFECTS THE AUTHORITY OF A LICENSING
26 AUTHORITY TO MANAGE THE PUBLIC STREETS, ROADS AND ALLEYS WITHIN ITS
27 BOUNDARIES OR TO EXERCISE ITS POLICE POWERS.

28 G. A LICENSE THAT IS IN FORCE ON JUNE 30, 2005 IS ENFORCEABLE IN
29 ACCORDANCE WITH ITS TERMS AND SHALL BE DEEMED TO BE IN COMPLIANCE WITH
30 SUBSECTIONS C AND D OF THIS SECTION UNLESS AND UNTIL THE LICENSE IS EXTENDED
31 OR RENEWED FOR A TERM THAT BEGINS AFTER DECEMBER 31, 2006.

32 H. NO LICENSING AUTHORITY MAY ISSUE ANY LICENSE FOR CABLE SERVICE
33 WITHIN ITS JURISDICTION ON TERMS OR CONDITIONS MORE FAVORABLE OR LESS
34 BURDENSOME THAN THOSE IN ANY EXISTING LICENSE FOR CABLE SERVICE ISSUED BY THE
35 LICENSING AUTHORITY. THIS PROHIBITION DOES NOT APPLY IF THE AREA FOR WHICH
36 THE LICENSE IS BEING SOUGHT IS NOT ACTUALLY BEING SERVED BY ANY EXISTING
37 CABLE OPERATOR HOLDING A LICENSE FOR THE AREA. FOR THE PURPOSES OF THIS
38 SUBSECTION, "ACTUALLY BEING SERVED" MEANS THAT CABLE SERVICE IS ACTUALLY
39 AVAILABLE TO SUBSCRIBERS TO SUCH EXTENT THAT THE ONLY ACT REMAINING IN ORDER
40 TO PROVIDE CABLE SERVICE IS THE PHYSICAL CONNECTION TO THE INDIVIDUAL
41 SUBSCRIBER LOCATION.

1 Sec. 3. Legislative findings

2 It is the public policy of this state and intent that this act be
3 enforced to the fullest extent permitted by any applicable federal law and
4 that the terms and conditions on which counties, cities, including charter
5 cities, and towns issue licenses to cable operators to use the public
6 highways are of statewide concern.